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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,271	10/20/2003	Ronald Michalski	71-844-1	3786
7590	12/23/2004			
Steven W. Weinrieb SCHWARTZ & WEINRIEB 2001 Jefferson Davis Highway Crystal Plaza One, Suite 1109 Arlington, VA 22202			EXAMINER CHAN, SING P	
			ART UNIT 1734	PAPER NUMBER
DATE MAILED: 12/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/688,271

**Applicant(s)**

MICHALSKI ET AL.

**Examiner**

Sing P Chan

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-15 and 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because the abstract is more than 150 words. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10-15 and 17-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 22 and 23, which recite "automatically adjusting the elevational disposition of said cigarette carton opening means," "said tax stamp application means disposed at said cigarette package tax stamp application station," and "said cigarette carton closing means disposed at said cigarette carton closing station," and "independently of the positional disposition of said cigarette carton height determination means disposed at said cigarette carton height determination station," however, the specification does not recite an embodiment with cigarette carton height determination means is situated independently from the remaining stations and means.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10-14, 16-18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, Deceased (U.S. 5,168,883) in view of Teegarden et al (U.S. 5,207,331) and Price (U.S. 4,317,319).

Regarding claim 22, 23, 11, 12, 14, and 17, Winn discloses a method of applying tax stamps to cigarettes in cartons. The method includes providing a conveyor to convey the different cigarette cartons, determining the height dimension of the cigarette cartons, providing a tax stamp applicator at a cigarette package tax stamp application station, and automatically adjusting the height of the applicator corresponding to the determined height of the carton to properly apply individual cigarette tax stamp onto individual cigarette packages, and a motor, i.e. a servo drive, is used to automatically adjust the height of the case-packing mechanism to case height. (Col 3, lines 24-51, Col 4, lines 5-54, and Col 5, lines 41-50) Winn is silent as to automatically adjusting the height of the closing means to the height dimension of the carton, the height determination means determined the height of the carton independent of the positional disposition of the height determination means and the logic controller is a programmable logic controller with memory of the height dimension of the cartons. However, providing a programmable logic controller with memory of the height dimension of the cartons is

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well known and conventional as shown for example by Teegarden et al. Teegarden et al discloses a method of conveying boxes or cartons of various sizes. The method includes providing a programmable logic controller with memory of the height dimension of the cartons, which is programmed to perform the requisite logic functions for the producing the controls, fixed sensors arrays connected to the PLC for sensing and determining the height of the container and to perform the control function such as adjusting the height of a lift with controls of the hydraulic lift asynchronously, i.e. independent of the disposition of the height determination means. (Col 9, lines 30-36, Col 12, lines 37-60 and Col 19 line 63 to Col 20, line 32)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a programmable logic controller with memory of the height dimension of the cartons connected to sensors arrays and to program the PLC to perform the logic function in response to input from sensors as disclosed by Teegarden et al in the method of Winn to allow an operator to track and control the conveying and application of stamps process easily without the need to an manual adjustment. Winn as modified by Teegarden et al is silent as to automatically adjusting the height of the carton closing means. However, adjusting the height of the carton closing means is well known and conventional as shown for example by Price. Price discloses a method of automatically close box with height sensing. The method includes providing an optical sensors to sense the height of the box, electrically wire the sensor to the logic controller and adjusting the sealing head to the proper height to close and seal the box. (Col 5, line 27 to Col 6, line 26)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an automatically adjusting means to automatically adjust the height of the closing head as disclosed by Price in the method of Winn as modified by Teegarden to close and seal the cartons of various sizes quickly and continuously without the need to stop and adjust the height manually.

Regarding claim 10, Winn discloses a carton opening station between height determination station and tax stamp application station to open the cigarette cartons and a cigarette cartons closing station for closing the cigarette cartons after the tax stamps are applied. (Col 3, lines 53-64 and Col 4, lines 55-61)

Regarding claim 13, Winn discloses the stations are equally spaced and the conveyor includes pads equally spaced on the chain for pushing the cartons at equal predetermined distance through the equally spaced stations. (Col 3, lines 24-28 and Figure 1)

Regarding claim 18, Winn discloses a pair of pinch bars squeezes the carton and pops up the flaps, i.e. domed upward, and insert a plow knife to open the flaps. (Col 3, line 57 to Col 4, line 4)

Regarding claim 20, Winn discloses the closing station includes a glue trough, a glue applicator wheel for applying glue to the undersurface of the upper carton flap, flap closer, and a pressure plate and roller for pressing the flaps closed. (Col 4, line 55 to Col 5, line 6)

Regarding claim 21, Winn discloses the stations are equally spaced and the conveyor includes pads equally spaced on the chain for pushing the cartons at equal

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predetermined distance through the equally spaced stations. (Col 3, lines 24-28 and Figure 1)

6. Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, Deceased (U.S. 5,168,883) in view of Teegarden et al (U.S. 5,207,331) and Price (U.S. 4,317,319) as applied to claims 22 and 23 above, and further in view of Baker et al (U.S. 4,263,766).

Winn discloses the stamping station includes a roll stamps holder for supporting the roll of stamps, linearly longitudinally moving the tax stamp applicator in incremental steps to place the stamping head onto the tax stamp paper with rows of tax stamps and transfer the tax stamp onto the cigarette cartons. (Col 4, lines 20-54) Winn is silent as to the stamping head includes longitudinally spaced stamping shoes. However, providing longitudinally spaced stamping shoes is well known and conventional as shown for example by Baker et al. Baker et al discloses a method of applying tax stamp onto the cigarette cartons. The method includes providing a stamp head with longitudinally spaced stamping plate elements, i.e. stamping shoes, which heat the individual stamp on the tax stamp paper. (Col 11, lines 20-27)

It would have been obvious to one ordinary skill in the art at the time the invention was made to provide longitudinally spaced stamping shoes, which heat the individual stamp on the tax stamp paper as disclosed by Baker et al in the method of Winn to allow a larger number of tax stamps to be place on the tax stamp paper to reduce the size of the tax stamp support and reduce waste.

***Response to Arguments***

7. Applicant's arguments with respect to claims 10-15 and 17-23 have been considered but are moot in view of the new ground(s) of rejection.

8. In response to applicant's argument with respect to Teegarden et al as being totally irrelevant. Teegarden et al is providing a teaching of using a programmable logic controller (PLC) with height determination means to determine the height of boxes or cartons and obtaining height data and in response to height data and performing programmed functions. With Winn providing the teaching of a method of detecting the height of the cartons or boxes to automatically adjusting the height of the stations, Teegarden et al provided the teaching of obtaining the information from the height determination means and to perform the programmed function such as automatically adjusting the height. Therefore, the teaching from Teegarden et al is relevant to Winn as it provide a means for connecting and controlling the height determination means and to height adjustment means.

9. In response to applicant's argument with respect to Price does not disclose height determination means. Price discloses sensors for detecting upper limit of the carton or box by adjusting the height of the sensors and sealing head until a sensed condition such as a sensor develop a negative signal and the other, a positive signal to a logic controller, which stop the adjustment. This is considered to be height determination.



***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

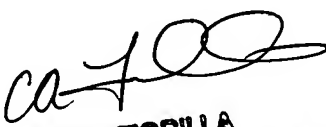
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sing P Chan whose telephone number is 571-272-1225. The examiner can normally be reached on Monday-Friday 7:30AM-11:00AM and 12:00PM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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